

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

ABDIEL F. AVILA,

Petitioner,

V.

THE ATTORNEY GENERAL OF  
THE STATE OF NEW JERSEY,  
et al.,

Respondents.

Civ. No. 18-9422 (NLH)

**MEMORANDUM OPINION & ORDER**

APPEARANCE:

Abdiel F. Avila  
788891C  
New Jersey State Prison  
PO Box 861  
Trenton, NJ 08625

*Petitioner Pro se*

Grace C. MacAulay, Camden County Prosecutor  
Jason Magid, Assistant Prosecutor  
Office of the County Prosecutor  
200 Federal Street  
Camden, NJ 08103

Attorneys for Respondent

HILLMAN, District Judge

Petitioner is proceeding pro se with an amended petition  
for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

Presently before the Court are Petitioner's motion for the appointment of pro bono counsel, ECF No. 61, and motion for leave to file a supplemental letter brief and application for

emergency relief, ECF No. 71. Respondents oppose the second motion to the extent it requests relief in the form of an order granting the amended petition. ECF No. 74. They otherwise rely on their answer. Id.

The Court will grant Petitioner's motion to file his supplemental materials, but otherwise deny the motion. Petitioner's letter brief and accompanying exhibits partially relate to his claim that his sentence is illegal, so the Court will permit him to file these documents and arguments. Respondents may, but are not required to, file a supplement to their answer in response.

The motion is moot to the extent it objects to the habeas proceedings being sealed as the Court lifted the seal on March 20, 2023. ECF No. 88. Petitioner's continued objection to the Camden County Prosecutor's Office representing the New Jersey Attorney General's Office is meritless. See ECF No. 71 at 26. The Attorney General's Office designated the Camden County Prosecutor's Office to represent its interests, ECF No. 15, and this Court has already dismissed this argument as meritless, ECF No. 44 at 10-11. Accordingly, the motion is denied in part.

There is no 'automatic' constitutional right to counsel in a federal habeas corpus proceeding." Reese v. Fulcomer, 946 F.2d 247, 263 (3d Cir. 1991), superseded on other grounds by statute, 28 U.S.C. § 2254. However, 18 U.S.C. § 3006A(a)(2)(B)

provides that the Court has discretion to appoint counsel for financially eligible petitioners where "the court determines that the interests of justice so require . . . ."

Before appointing counsel, a court "must first decide if petitioner has presented a nonfrivolous claim and if the appointment of counsel will benefit the petitioner and the court. Factors influencing a court's decision include the complexity of the factual and legal issues in the case, as well as the pro se petitioner's ability to investigate facts and present claims." Reese, 946 F.2d at 263-64. The amended petition survived initial review under Rule 4 of the Rules Governing Section 2254 Cases; therefore, it is not frivolous on its face. However, the Court concludes the appointment of counsel is not warranted.

The Court denied Petitioner's prior motion for the appointment of counsel. ECF No. 45. The Court concludes that there has not been a change in circumstances requiring the appointment of counsel. Even assuming that Petitioner's claims had some merit, the issues raised in the petition are not especially complex such that the appointment of counsel would be necessary to aid the Court or Petitioner. Petitioner is a prolific filer, amply demonstrating his ability to present his case. Therefore, Court will deny the motion for counsel. The

Court reserves the right to sua sponte reconsider this decision should circumstances change.

THEREFORE, IT IS on this 31st day of March, 2023

ORDERED that Petitioner's motion for the appointment of pro bono counsel, ECF No. 61, be, and the same hereby is, DENIED WITHOUT PREJUDICE; and it is further

ORDERED that Petitioner's motion for leave to file a supplemental letter brief and application for emergency relief, ECF No. 71, be, and the same hereby is, GRANTED IN PART. The motion is granted to the extent that Petitioner may file his supplemental documents. The motion is otherwise DENIED; and it is further

ORDERED that Respondents may, but are not required to, file a supplement to their answer within 30 days of this Order; and it is finally

ORDERED that the Clerk shall send Petitioner a copy of this Order by regular mail.

At Camden, New Jersey

s/ Noel L. Hillman  
NOEL L. HILLMAN, U.S.D.J.